

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated September 21, 2009. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-13 are pending in the Application.

In the Office Action, claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 7,263,201. The Office Action indicates that a terminal disclaimer may be used to overcome this rejection. This rejection is respectfully traversed. The Office Action admits that U.S. Patent No. 7,263,201 omits significant portions of the claims however, draws the conclusion that "[i]t would have been obvious ..." (see, Office Action, page 5). This position of the Office Action is respectfully traversed in that there is no teaching in U.S. Patent No. 7,263,201 to provide a visually discernable mark in both of the data and non-data areas of the disk that is visually discernable without a device. Further, the Office Action does not provide any explanation or guidance of why it would be considered obvious to do this in view of the teachings of U.S. Patent No. 7,263,201, other

than to say "that it would render the watermark visually discernable in the data area. It is respectfully submitted that in light of the claims as presented, this explanation is not supportable. Further evidence that this rejection is not supportable is provided and recognized by the Office Action itself, which only rejected the claims over prior art including U.S. Patent No. 7,263,201 and two additional prior art references.

However, it is respectfully submitted that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable or includes allowable claims.

In the Office Action, claims 1-13 are rejected under 35 U.S.C. §103(a) over European Patent Publication No. EP 0997899 to Murakami ("Murakami") in view of U.S. Patent No. 7,263,201 to Yntema ("Yntema") in further view of European Patent Publication No. WO 98/08180 to Sollish ("Sollish"). These rejections are respectfully traversed. It is respectfully submitted that claims 1-13 are allowable over Murakami in view of Yntema and Sollish for at least the following reasons.

It is undisputed that "[n]either Murakami nor Yntema teaches that the visually discernable watermark is visually discernable

without a device discerning the visually discernable watermark." (See, Office Action, page 7.) Sollish is cited to provide that which is admitted missing from both Murakami and Yntema, however, it is respectfully submitted that reliance on Sollish is misplaced.

Sollish is clear, as recognized by the Office Action (see, Office Action, bottom of page 7) that the codes of Sollish must be read using a device, such as a decoder (see, Sollish, page 31, lines 3-9) or standard CD reader (see, Sollish, page 35, lines 19-20). Further, while Sollish does use two codes in tandem, these codes are both found in the data area and therefore have little to do with the claims as presented.

It is respectfully submitted that the record carrier of claim 1 is not anticipated or made obvious by the teachings of Murakami in view of Yntema and Sollish. For example, Murakami in view of Yntema and Sollish does not teach, disclose or suggest, a record carrier that amongst other patentable elements, comprises (illustrative emphasis added) "a data area for storing data in the form of marks, in which the data is encoded by means of a channel code, wherein a parameter of the channel code is controlled so as to introduce a predetermined run length distribution in the marks on the computer readable memory medium, thereby introducing first

information relating to a visually discernable watermark, wherein at least a portion of the first information is visually discernable on the computer readable memory medium in the data area without a device to discern the first information, and a non-data area comprising second information relating to the visually discernable watermark, wherein at least a portion of the second information is visually discernable on the computer readable memory medium in the non-data area without a device to discern the second information, the first and the second information together forming the visually discernable watermark, wherein the visually discernable watermark is visually discernable on the computer readable memory medium without a device discerning the visually discernable watermark" as recited in claim 1, and as similarly recited in claim 13.

It is respectfully submitted that while the Office Action takes a position that Murakami shows a visually discernable watermark, this position is respectfully traversed. While the sections of Murakami cited in the Office Action refer to a burst cutting area BCA and a watermark, Murakami does not teach, disclose or suggest that these features are visually discernable on the computer readable memory medium without use of a device.

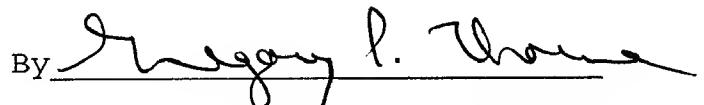
Based on the foregoing, the Applicant respectfully submits that independent claims 1 and 13 are patentable over Murakami in view of Yntema and Sollish and notice to this effect is earnestly solicited. Claims 2-12 respectively depend from claim 1 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

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Serial No. 10/597,248
Amendment in Reply to Office Action of September 21, 2009

Applicant has made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

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